

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

FILED

AUG 25 2005

U. S. DISTRICT COURT
EASTERN DISTRICT OF MO

The St. Louis Tan Company,
THETANCO
and Team Tan, Inc.

Plaintiffs,

vs.

Beckman Enterprises, Ltd., BIG, Inc.,
Beckman Investment Group, Inc.,
Edward Beckman, Tarrt Enterprises, LLC,
James Tarrt and Amanda Tarrt,

Defendants.

No.: _____

4 05CV01351CEJ

COMPLAINT

Come Now Plaintiffs, The St. Louis Tan Company ("St. Louis Tan"), THETANCO ("THETANCO") and Team Tan, Inc. ("Team Tan") by and through their undersigned attorneys and for their Complaint state as follows:

Parties

1. Plaintiff St. Louis Tan is a corporation organized under the laws of the state of Missouri with its principal place of business in Jefferson County, Missouri.
2. Plaintiff THETANCO is a corporation organized under the laws of the state of Missouri with its principal place of business in Jefferson County, Missouri.
3. Plaintiff Team Tan is a corporation organized under the laws of the state of Missouri with its principal place of business in Jefferson County, Missouri.
4. Defendant Beckman Enterprises, Ltd. ("Beckman Enterprises") is a corporation organized under the laws of the state of Missouri with its principal place of business in St. Louis City, Missouri.

5. Defendant BIG, Inc. ("BIG") is a corporation organized under the laws of the state of Missouri with its principal place of business in St. Louis City, Missouri.

6. Defendant Beckman Investment Group, Inc. ("Beckman Investment") is a corporation organized under the laws of the state of Missouri with its principal place of business in St. Louis City, Missouri.

7. Defendant Edward Beckman is the President and sole owner of Beckman Enterprises, Beckman Investment and BIG and is an individual residing in St. Louis County, Missouri.

8. Defendant Tartt Enterprises, LLC ("Tartt Enterprises") is a corporation organized under the laws of the state of Alabama with its principal place of business in Hoover, Alabama.

9. Defendant James Tartt is a joint owner of Tartt Enterprises and is an individual residing in Jefferson County, Alabama.

10. Defendant Amanda Tartt is a joint owner of Tartt Enterprises and is an individual residing in Jefferson County, Alabama.

11. Venue is proper in this court because a substantial part of the events giving rise to the claims occurred in this District and pursuant to forum selection clauses in the agreements described below.

12. This court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1338 and 1367.

General Allegations

13. St. Louis Tan has through substantial expenditures of time, effort and funds, created and developed valuable proprietary information, concepts marketing strategies, advertising materials and other marketing, management, financial, technical and operational

expertise, experience and information relating to the operation of tanning businesses and salons that provide tanning services and sell tanning products ("Licensed Materials").

14. St. Louis Tan is the owner of all right and interest in certain trade names and trademarks ("the Marks").

15. On or about January 1, 1999, St. Louis Tan and Beckman Enterprises executed a license agreement ("the Hampton License Agreement") under which St. Louis Tan granted to Beckman Enterprises the right to use the Licensed Materials and the Marks to operate a tanning salon at 5601 Hampton Ave. in St. Louis, Missouri ("the Hampton Salon").

16. A true and correct copy of the Hampton License Agreement is attached hereto as Exhibit 1.

17. THETANCO is a franchisor of tanning salons and has through considerable time and effort developed a tanning salon business model featuring tanning services, tanning equipment, massagers, gym equipment, nutritional food products, skin care products and beauty aids, together with related services, products, merchandise, and accessories. THETANCO has also developed distinctive business formats, methods, procedures, designs, layouts, standard and specifications for tanning salon businesses (collectively "the THETANCO System") which it makes available to franchisees pursuant to individual franchise agreements.

18. THETANCO is the owner of all right and interest in certain trade names and trademarks ("the THETANCO Marks").

19. On or about October 1, 2001, THETANCO and Tartt Enterprises entered into an Area Development Agreement ("ADA") pursuant to which THETANCO granted to Tartt Enterprises the right to develop tanning salons in the state of Alabama subject to the execution of individual franchise agreements.

20. A true and correct copy of the ADA is attached hereto as Exhibit 2.

21. On or about October 1, 2001, THETANCO and Tartt Enterprises executed a franchise agreement ("Franchise Agreement") under which THETANCO granted to Tartt Enterprises the right to operate a tanning salon at 410 Palisades Blvd. in Birmingham, AL using the THETANCO System and the THETANCO Marks ("the Birmingham Salon").

22. In conjunction with executing the Franchise Agreement and as an inducement to the execution of the Franchise Agreement by THETANCO, James Tartt and Amanda Tartt executed Appendix C to the Franchise Agreement titled Guaranty and Assumption of Obligations agreeing to be personally bound by the provisions of the Franchise Agreement and to be liable for any breaches thereof.

23. True and correct copies of the Franchise Agreement including Appendix C are attached hereto as Exhibit 3.

24. Upon information and belief, on or about April 18, 2005, Beckman Enterprises, Edward Beckman, BIG, Beckman Investment Group, Tartt Enterprises, James Tartt and Amanda Tartt acting in concert as joint partners, managers, owners or operators began operating a tanning salon at 2236 Pelham Parkway, Suite 7-8 in Pelham, Alabama ("the Pelham Salon") using the THETANCO System and THETANCO Marks without authority from THETANCO, without executing a franchise agreement and without paying any fees or royalties to THETANCO.

25. Upon information and belief, on or about April 18, 2005, Beckman Enterprises, Edward Beckman, BIG, Beckman Investment Group, Tartt Enterprises, James Tartt and Amanda Tartt acting in concert as joint partners, managers, owners or operators began operating a tanning salon at 1425 Montgomery Highway, Suite 111/115 in Birmingham, Alabama ("the Vestavia Salon") using the THETANCO System and THETANCO Marks without authority from THETANCO, without executing a franchise agreement and without paying any fees or royalties to THETANCO.

Count I

(Lanham Act - Defendants Beckman Enterprises, Edward Beckman, BIG, Beckman Investment Group, Tartt Enterprises, James Tartt and Amanda Tartt)

26. Plaintiffs incorporate all of the allegations of paragraphs 1 through 25 above by reference.

27. Defendants' past, present and continuing operation of the Pelham Salon and the Vestavia Salon using THETANCO Marks has infringed and will continue to infringe upon THETANCO Marks in violation of 15 U.S.C. at §1125(a).

28. Defendants' conduct constitutes false designation of origin, false description, and false representation that is likely to cause confusion, cause mistake, and to deceive, as to the origin of the products and services offered by Defendants, and as to THETANCO's sponsorship or approval of the goods and services marketed and sold by Defendants.

29. Upon information and belief, Defendants' conduct has confused and is likely to confuse and deceive, customers, employees and the public to THETANCO's detriment and in dilution of the value of THETANCO Marks and diminution THETANCO's goodwill.

30. Defendants' conduct has been willful and intentional and without any claim of right, with reckless disregard of MSI's rights and the rights of the public and with the intent to deceive the public and the trade, for the purposes of unjustly enriching themselves.

Count II

(Breach of License Agreement - Defendant Beckman Enterprises)

31. Plaintiffs incorporate all of the allegations of paragraphs 1 through 30 above by reference.

32. Pursuant to the terms of the Hampton License Agreement, Beckman Enterprises agreed to, among other things, pay to St. Louis Tan monthly license fees and advertising fees (“Hampton License Fees”).

33. Defendants Beckman Enterprises has opened and has, for some time, operated the Hampton Salon enjoying all of the rights and privileges granted to it under the Hampton License Agreement.

34. St. Louis Tan has performed all of its obligations under the Hampton License Agreement.

35. Defendant Beckman Enterprises has failed to pay all of the Hampton License Fees required in the Hampton License Agreement.

36. St. Louis Tan has been damaged by Defendant Beckman Enterprises’ failures to pay the Hampton License Fees required under the Hampton License Agreement in an amount to be determined at trial.

Count III

(Breach of Franchise Agreement - Defendants Tartt Enterprises, James Tartt and Amanda Tartt)

37. Plaintiffs incorporate all of the allegations of paragraphs 1 through 36 above by reference.

38. Pursuant to the terms of the Franchise Agreement, Tartt Enterprises and James and Amanda Tartt agreed to, among other things, pay to THETANCO monthly royalties and advertising fees (“Royalties”).

39. Defendants Tartt Enterprises and James and Amanda Tartt have opened and have, for some time, operated the Birmingham Salon enjoying all of the rights and privileges granted to them under the Franchise Agreement.

40. THETANCO has performed all of its obligations under the Franchise Agreement.

41. Defendants Tardt Enterprises and James and Amanda Tardt have failed to pay all of the Royalties required under the Franchise Agreement.

42. THETANCO has been damaged by Defendants' failures to pay the Royalties required under the Franchise Agreement in an amount to be determined at trial.

Count IV

(Action on Account - Defendants Defendants Beckman Enterprises, Edward Beckman, BIG, Beckman Investment Group, Tardt Enterprises, James Tardt and Amanda Tardt)

43. Plaintiffs incorporate all of the allegations of paragraphs 1 through 42 above by reference.

44. Plaintiff Team Tan is a distributor of various tanning products including tanning equipment, tanning beds, tanning lotions and sprays, and skin care and beauty products.

45. During the course of their operations of the Birmingham Salon, the Pelham Salon and the Vestavia Salon, Defendants purchased various products from Team Tan.

46. Despite requests for payment from Team Tan, Defendants have failed to pay Team Tan for all products purchased by them.

47. Accordingly, Team Tan has been damaged by Defendants' failures to pay for products purchased by them in an amount to be determined at trial.

WHEREFORE, Plaintiffs pray for a judgment against Defendants in an amount to be determined at trial including Defendants' profits from the operations of the Pelham Salon and Vestavia Salon, pre and post judgment interest, Plaintiffs' costs and reasonable attorneys' fees and for such further relief as this court deems just and proper.

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